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SB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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INVENTOR'S NAME (Print or Type)

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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

9

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/557,418

Applicant(s)

MATTHEWS ET AL

Examiner

ARTHUR L. GERBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 4-21-00,  
☒ Responsive to communication(s) filed on 7-10-00, 12-15-00, 4-5-01.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-43 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-43 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4, 6, 7
- ☒ Notice of Reference(s) Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-9, 16 and 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 28 are indefinite in not reciting what is intended by "other additives".

Claims 8 and 29 are indefinite in not reciting "by weight" after "10%". There is no antecedent basis in claim 11 for "said starter <sup>culture</sup> ~~medium~~" (claim 16). Corrections are required without new matter.

3. Claims 5 and 26 are objected to because of the following informalities: In claims 5 and 26, "by" should be added before "wt". Appropriate correction is required.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 10-28 and 31-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz (4,362,750).

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Swartz discloses preparing fermented sausage by mixing comminuted meat in the form of a sausage emulsion with a fermented milk product, i.e., yogurt or fermented whey, having a pH ~~to~~<sup>5.3</sup> to 4.8 (claim 6) and spices. Subsequently, the mixture is stuffed in sausage ~~casing~~<sup>casing</sup> and then cooked (col. 6, lines 44-50). Finding the optimum pH value for the fermented milk product and the mixture, the optimum amount of each component, the optimum quenching temperature and the optimum fermented milk product<sup>t</sup> and meat temperature<sup>s</sup> (claims 15, 19, 20, 35, 39 and 40) would require nothing more than routine experimentation by one reasonably skilled in this art. The claimed procedure for ~~the~~ preparing the fermented milk product (claims 14-16 and 34-36), stuffing via a stuffing horn (claims 17 and 37) and cooking sausage in boiling water, hot air or hot smoke (claims 21-23 and 41-43) are all conventional in the art.

6. Claims 1-7, 10-28 and 31 are also rejected under 35 U.S.C. 103(a) as being unpatentable over EP-0478526.

The EP discloses preparing a fermented sausage product by mixing comminuted pork or beef with a fermented milk product, having a pH of 5-5.6, and spices, ~~the result~~<sup>stuffed</sup> the result<sup>at</sup> mixture into a casing and drying. Applicant is<sup>is</sup> referred to the fourth and fifth sentences in paragraph no. 5 above.

7. Claims 8, 9, 29 and 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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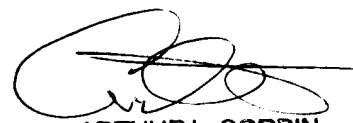
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday-Friday from 9:30 a.m. to 7:00 p.m. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 30<sup>5</sup>-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh

October 18, 2001



ARTHUR L. CORBIN  
PRIMARY EXAMINER  
10-19-01